



BOARD OF APPEALS  
Enid Starr, Co-Chair  
Jesse Geller, Co-Chair  
Robert De Vries

# *Town of Brookline* *Massachusetts*

Town Hall, 1<sup>st</sup> Floor  
333 Washington Street  
Brookline, MA 02445-6899  
(617) 730-2010 Fax (617) 730-2043  
Patrick J. Ward, Clerk

TOWN OF BROOKLINE  
BOARD OF APPEALS  
CASE NO. 080052

Petitioners, Joshua and Debra Troderman, applied to the Building Commissioner for permission to renovate the existing attic space in order to increase the living space for their exclusive use as the owners of the third floor condominium at 7 Hurd Road, Brookline. The application was denied and an appeal was taken to this Board.

On November 26, 2008 the Board met and determined that the properties affected were those shown on a schedule in accordance with the certification prepared by the Assessors of the Town of Brookline and approved by the Board of Appeals and fixed January 22, 2009 at 7:00 p.m. on the first floor of the Town Hall as the time and place of a hearing on the appeal. Notice of the hearing was mailed to the petitioner, to their attorney, to the owners of properties deemed by the Board to be affected as they appeared on the most recent local tax list, to the Planning Board and to all others required by law. Notice of the hearing was published on January 1, 2009 and January 8, 2009, in the Brookline Tab, a newspaper published in Brookline.

Copy of said notice is as follows:

## NOTICE OF HEARING

Pursuant to M.G.L. C. 39, sections 23A & 23B, the Board of Appeals will conduct a public hearing to discuss the following case:

Petitioner: **JOSHUA AND DEBRA TRODERMAN**

Location of Premises: **7 HURD ROAD BRKL**

Date of Hearing: **01/22/09**

Time of Hearing: **7:00 p.m.**

Place of Hearing: **1<sup>ST</sup> Floor Conference Room, Town Hall**

A public hearing will be held for a variance and/or special permit from:

- 1) **5.20; Floor area Ratio, Variance Required.**
- 2) **8.0202; Alteration or Extension, Special Permit Required** of the Zoning By-Law to renovate and convert the existing attic into habitable floor area to be combined as part if the existing third floor unit at **7 HURD ROAD BRKL.**

Said Premise located in an **M-1.0** (Apartment House) district.

*Hearings, once opened, may be continued by the Chair to a date and time certain. No further notice will be mailed to abutters or advertised in the TAB. Questions regarding whether a hearing has been continued, or the date and time of any hearing may be directed to the Zoning Administrator at 617-734-2134 or check meeting calendar at: <http://calendars.town.brookline.ma.us/MasterTownCalandar/?FormID=158>.*

*The Town of Brookline does not discriminate on the basis of disability in admission to, access to, or operations of its programs, services or activities. Individuals who need auxiliary aids for effective communication in programs and services of the Town of Brookline are invited to make their needs known to the ADA Coordinator, Stephen Bressler, Town of Brookline, 11 Pierce Street, Brookline, MA 02445. Telephone: (617) 730-2330; TDD (617) 730-2327.*

**Enid Starr  
Jesse Geller  
Robert De Vries**

At the time and place specified in the notice, this Board held a public hearing. Present at the hearing was Chairman, Jonathan Book and Board Members, Kathryn Ham and Christina Wolfe. The petitioners were represented by Attorney Ronny M. Sydney of 370 Washington Street, Brookline MA 02445.

Attorney Sydney then described the factual background of the petition as follows:



The property located at 7 Hurd Road is a 3-decker built in 1910 and converted into condominiums around 2000. It is located behind St. Mary's Church near Brookline Village in a very congested neighborhood. The attic is unfinished space but is determined on the Master Deed to be for the exclusive use of the third floor condominium unit. The condominium documents state that the area may be finished provided there is approval for the plans from the Condominium Trustees and the owners receive all relevant permits from the Town. Attorney Sydney provided a Certificate of Approval signed by the Condominium Trustees.

The footprint of the building will not be changed and the height will not be increased. The roof windows and skylights will not look into any other building nearby. The attic has several existing skylights, a shed dormer and a tower with small roof windows. There is also a turret in the attic space. The petitioners are also proposing to install two new skylights/roof windows which are not visible from any neighboring homes.

The neighborhood is comprised of similar 3 family homes and some small apartment buildings. The structures on either side of this property are much larger and very close to this building. On one side there is not even enough space for a car and on the other side there is barely enough room for just one vehicle. There is a very tiny play area to the rear of the building. Running behind the property is a small dead end street known as Linden Place. The house directly behind 7 Hurd Road is very close so there is little yard space on any side of this property. This is one of the smallest residences in the district, and the only property that has buildings close on all three sides. The house is unique in that it has a turret (the area of which is counted in FAR).

The petitioners are proposing to convert 777 square feet for the attic into habitable space to become part of the third floor condominium unit. There will be a new stairway from the third floor unit that will lead to a master bedroom with a bathroom, dressing area, closet and storage. The stairway will only be assessable

from the third floor unit. Except for the addition of the two skylights/roof windows, no exterior alterations will be made.

The zoning relief required is as follows:

**Section 5.20 Floor Area Ratio.** Right now there is a pre-existing non-conforming condition where 135% of the floor area ratio exists and what is proposed is 158% which requires a variance. The floor area that is allowed is 3,311 feet and now there exists 4,464. What is being proposed is 5,241 feet. Therefore the parties are seeking a variance.

**Section 8.02.2 An Alteration or Extension.** This case requires an alternation of a pre-existing non-conforming structure requiring a special permit.

Attorney Sydney stated that a Variance can be awarded due to the fact that this is among the smallest residences in the district and is on a very small lot with buildings encroaching from all sides. She also noted the unique shape of the building which includes a turret. In addition, without the relief, the family would be faced with a hardship of needing to leave Brookline to find a similarly-sized home to meet the needs of this growing family. Because of the high cost of housing Brookline, expanding this unit is the only viable means of permitting the family to remain in Brookline. Most of the dwellings on the street and in this neighborhood have developed attic space so that most of the dwellings exceed the FAR allowed by current Zoning.

The Chair asked if anyone wished to speak in favor of the proposal and several parties were present to speak in favor. John Sandler who lives on Linden Place (directly behind 7 Hurd Road) spoke in support of the project. Also Mary Liz Brenninkmeyer and Kim Girard owners of the first and second floor units at 7 Hurd Road spoke in favor of this project. The Petitioners also presented a petition signed by numerous residents in the neighborhood. There was no one present to speak in opposition of this proposal.

Courtney Starling, Town Planner delivered the findings of the Planning Department.



## Section 5.20 – Floor Area Ratio

Floor Area	Allowed	Existing	Proposed	Finding
Floor Area Ratio (% of allowed)	1.0 100%	1.35 135%	1.58 158%	Variance*
Floor Area (s.f.)	3,311	4,464	5,241	

\* The Board of Appeals may grant attic or basement conversions up to 150% of allowed FAR by right for **single and two-family houses** only, and this is a three-family structure.

## Section 8.02.2 – Alteration or Extension

A special permit is required to alter a pre-existing non-conforming structure.

Ms. Starling reported that the Planning Board had no objection to this proposal should the Board of Appeals find statutory grounds for the granting of a variance. The addition of new habitable floor area will not impact the foot print of the house nor be outwardly visible with the exception of two new skylights on the side of the roof. Ms. Starling mentioned that she walked around the neighborhood and spoke to some neighbors all of whom said they were in favor of this project. Ms. Starling then presented the position of the Planning Board stating that the Planning Board supported this proposal providing that this Board found statutory grounds for granting a variance. Ms. Starling said the Planning Board noted that the alleyway and the houses to the rear of the property that constrain the lot, the shape of the building including the turret, and the lot being one of the smallest lots in the zone could be considered unique conditions to the property. Therefore the Planning Board recommends approval subject to the following conditions:

1. **The attic shall not be converted into a separate unit.**
2. **Prior to issuance of a building permit, the applicant shall submit to the Building Commissioner for review and approval for conformance to the Board of Appeals decision: 1) a final site plan stamped and signed by a registered engineer or land surveyor; 2) final elevations and plans stamped and signed by a registered engineer or architect, 3) proof of approval of plans from the Condominium Trustees; and 4) evidence that the Board of Appeals decision has been recorded at the Registry of Deeds.**

Michael Shepard, Building Commissioner, spoke in favor of the proposal as long as it met the necessary standards for the Zoning Board to grant the Variance and the Special Permit. Mr. Shepard also pointed out that previous decisions did not have any bearing on this decision but each individual is case specific. Mr.

Shepard supported the project saying there were no external changes and it was an exceedingly small lot but allowing the development of the attic space was in keeping with the neighborhood. Mr. Shepard noted that §8.02.2 of the Zoning By-law prohibits the increase on any non-conforming condition. The Chair opined that should the Board determine that the statutory requirements for a variance have been satisfied, it would trump the restrictions imposed under §8.02.2 with respect to granting a special permit. Mr. Shepard stated that the Building Department has no objections to the requested relief. He further stated that he will ensure that all state code provisions are satisfied.

The Board, having deliberated on this matter, considered the foregoing testimony and concluded it is desirable to grant all the relief requested by the Petitioner. The Board finds that the literal compliance with the requirements of §5.20 of the Brookline Zoning By-Law would impose a significant financial hardship on the applicants in light of the existing conditions at the lot in question. The building at 7 Hurd Road is unique because of its small size and configuration and that it is the only structure in the vicinity that does not have a finished attic. If the current residents were not allowed to finish the space, they would be forced to look elsewhere for housing to accommodate their growing family and incur significant financial hardship. Granting the requested variance for additional floor area will not be more detrimental to the public good, nor nullify, nor substantially derogate from the intent or purposes of the Brookline Zoning By-Law.

In addition, the Board finds that a special permit may be granted pursuant to §8.02.2 of the Zoning By-Law and makes the following findings pursuant to §9.05 of the Zoning By-Law:

- a. The specific site is an appropriate location for such a use, structure, or condition.
- b. The use as developed will not adversely affect the neighborhood.
- c. There will be no nuisance or serious hazard to vehicles or pedestrians.
- d. Adequate and appropriate facilities will be provided for the proper operation of the proposed use.



- e. The development as proposed will not have a significant adverse effect on the supply of housing available for low and moderate income people.

Accordingly, the Board voted unanimously to grant the requested relief subject to the following conditions:

1. The attic shall not be converted into a separate unit.
2. Prior to issuance of a building permit, the applicant shall submit to the Building Commissioner for review and approval for conformance to the Board of Appeals decision: 1) a final site plan stamped and signed by a registered engineer or land surveyor; 2) final elevations and plans stamped and signed by a registered engineer or architect, 3) proof of approval of plans from the Condominium Trustees; and 4) evidence that the Board of Appeals decision has been recorded at the Registry of Deeds.


Unanimous Decision of  
The Board of Appeals



Jonathan E. Book, Chairman

Filing Date: February 17, 2009

A True Copy  
ATTEST:



Patrick J. Ward  
Clerk, Board of Appeals